

THE MARTHA'S VINEYARD COMMISSION

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Martha's Vineyard Commission Minutes for the Regular Meeting of January 17, 2002

The Martha's Vineyard Commission (the MVC or the Commission) held its Regular Meeting on Thursday, January 17, 2002, at 7:30 p.m. in the first floor conference room at the Commission Offices in the Olde Stone Building, 33 New York Avenue, Oak Bluffs, Massachusetts. At 7:35 p.m., James R. Vercruysse – Commission Chairman and a member at large from Aquinnah – called the Regular Meeting to order.

[Commission members present at the gavel were: J. Athearn; C. Brown; M. Cini; M. Donaroma; J. Greene; T. Israel; C.M. Oglesby; M. Ottens-Sargent; K. Rusczyk; L. Sibley; R.L. Taylor; R. Toole; J. Vercruysse; K. Warner; R. Wey; A. Woodruff; and R. Zeltzer. Mr. Best arrived at 7:41 p.m. All of these members remained for the entirety of the Regular Meeting.]

Vote: Appointment of New Members to the Joint Transportation Committee.

Chairman Vercruysse explained to the members that they needed to vote that evening to accept Mary Snyder of Tisbury as an *ex officio* member of the Joint Transportation Committee (JTC) and Keith Emin as a core member of the committee from Chilmark. *[See the memorandum entitled "JTC Update" by David Wessling, dated January 17, 2002, in the Full Commission Meeting File of January 17, 2002 (the meeting file).]* "So moved," said Tristan Israel, the Selectmen's Appointee from Tisbury. Said Motion was seconded. By voice vote Mr. Israel's Motion carried unanimously, with 17 Ayes, no Nays and none Abstaining.

Announcements.

Chairman Vercruysse announced that the **Search Committee** would be meeting on Saturday, January 19, at 10:00 a.m. at the Commission Offices. *[Mr. Best arrived at this point, 7:41 p.m.]*

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Comprehensive Planner William G. Veno read the list of names of the Commission members who wished to attend on January 25 the **meeting of the Nantucket, Cape Cod and Martha's Vineyard Commissions**. Those who had signed on thus far were: C. Brown; M. Cini; M. Ottens-Sargent; R. Toole; J. Vercruysse; and R. Wey. Linda Sibley, a Commission member at large from West Tisbury, asked to be removed from the list, and Andrew Woodruff, also a member at large from West Tisbury, requested that his name be added.

Kate Warner, the West Tisbury Selectmen's Appointee, mentioned that she had received her **Meeting materials via e-mail** that week. "It was an excellent thing, it worked great," she remarked. "I would suggest that we all try this out." Ms. Warner also reiterated the requests she had made in the previous Meeting that both sides of the paper be used and that copies of announcement not be made unnecessarily. Jane A. Greene, the Chilmark Selectmen's Appointee, asked that her materials not be e-mailed to her office. The Chairman recommended that those who wished to have their materials e-mailed should notify the Staff Secretary.

There ensued a brief discussion about a **Special Meeting with Commission Counsel**, which had been scheduled for Wednesday, January 23, at 5:00 p.m. It was quickly concluded that the date had to be changed because of conflicts.

Special LUPC Session: Down Island Golf Club Cont'd Post-Public Hearing Review.

At the Chairman's request, Edgartown Selectmen's Appointee Michael Donaroma made a **Motion To Recess The Regular Meeting And To Go Into A Special Land Use Planning Committee (LUPC) Meeting**. Said Motion was duly seconded and carried unanimously.

Richard J. Toole – a Commission member at large from Oak Bluffs and the LUPC Chairman – took the gavel. Mr. Toole informed the members that at the January 14 LUPC meeting, Water Resources Planner William M. Wilcox had begun to go through his suggested conditions for the Down Island Golf Club proposal (DRI #543) and that they would pick up where they had left off.

A. Wilcox Discussion Points for Possible DIGC Conditions: January 14, 2002.

Mr. Wilcox referred the members to a document entitled *Discussion Points for Possible DIGC Conditions: W. Wilcox for Land Use Planning Committee – January 14, 2002*, as well as a similarly titled (but revised and reordered) version of that document dated January 16, 2002. [See the meeting file for copies.] Mr. Wilcox explained that for the latter document he had separated the conditions into two categories, beginning with what had been offered by the Applicant and would be accepted by the Commission. A second set of conditions contained what he was suggesting as modifications to some of the Applicant's offers.

Mr. Wilcox related that for the first document he had broken down the conditions into the following: Monitoring; Course Management; the Nitrogen Offset Program; Funding Requirements; and the Watershed Protection Committee (formerly known as the Lagoon Pond Restoration Committee). The first three sections had been covered in the January 14 meeting, so Mr. Wilcox started with Condition 31 under Funding Requirements. He explained that each of the conditions in the earlier sections had some cost associated with it and that the Funding Requirements section's purpose was to identify those costs.

Item 31 concerned water sampling in Lagoon Pond, continued Mr. Wilcox, something that had been offered by the Applicant, but to a somewhat reduced degree. He said he was suggesting four sample stations in the Lagoon, with one sampling at the outlet at the upper end of the pond and three in the Lagoon itself, at the lower end. He was recommending, he said, that testing be done once in July, twice in August and twice in September, for a period of 10 years. Such a length of time had been chosen, he noted, because some of the possible effects on the groundwater would not show up for a number of years.

In addition, Mr. Wilcox went on, he was suggesting the monitoring of existing wells that the Lagoon Pond Association had had Bruce Poole put in along the shore of the lower end of the Lagoon (LPA Wells 4, 5 and 6), as well as of the culvert that drained under Barnes Road, very near to the herring run. These four had been sampled by Mr. Poole for 13 years, Mr. Wilcox said, "so there's a pretty good record of what the existing water quality is in those wells." Because these sources were located right on the beach, he added, they would collect a spectrum of the groundwater. His estimate for the cost of this sampling was around \$6,000.

Mr. Wilcox moved on to Item 32, which concerned the funding for the lysimeters, which would determine the impact of the fertilization program. His estimate for this was \$20,000 annually, he said.

Item 33 was the funding of monthly water level data from the observation wells for purposes of water table elevation, two of which already existed. Mr. Wilcox pointed out that these would measure the impact on the water table of the irrigation pumping for the golf course. Testing should be monthly in season, he said, and every other month during the winter. He estimated that such testing would cost \$2,000 a year.

Mr. Wilcox turned to Item 34, which concerned funding for the Watershed Protection Committee that would allow its member to hire experts to evaluate the Quality Assurance Plan. (The QAP would manage and identify how the samples would be taken and interpreted.) Thus, the Committee could ascertain if their targets were being met, he explained. Mr. Wilcox estimated that this would cost \$25,000 annually in the first few years, since time would be needed to sort out what the data gathered meant. He recommended that this amount be paid into an appropriate Town account and that any excess be applied to the payments for subsequent years.

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Mr. Wilcox said that he viewed the performance bond called for in Item 35 as a way to force the Applicant to comply with the other conditions. "I have no idea how much is the right amount of money," he remarked. Said funds would be released over a period of time (his suggestion was seven years), he went on, and the release of funds would be based upon meeting the goals and the requirements that the Applicant had offered or that were being conditioned by the Commission. Mr. Wilcox recommended releasing the funds in the following five portions:

- 1) the successful installation of the lysimeters and wells, and the collection of one year's data from these devices (release 20 percent of the bond);
- 2) the successful completion of the second year's satisfactory performance of sampling, successfully meeting golf course nitrogen loading goals, the identified wastewater system upgrades off-site, the successful operation of the club's wastewater treatment system and meeting the water table drawdown limits (release 20 percent of the bond);
- 3) the successful completion of the third year's satisfactory performance of sampling, successfully meeting nitrogen loading goals, the upgrade of off-site systems to remove an additional 300 pounds of nitrogen from the Lagoon watershed and 65 pounds of nitrogen from the Lagoon watershed, any remaining pre-existing wastewater upgrades off site, and meeting water table drawdown limits (release of 20 percent of the bond);
- 4) the successful completion of the fourth year's satisfactory performance of sampling, successfully meeting nitrogen loading goals, and the upgrade of off-site systems to remove an additional 300 pounds of nitrogen from the Lagoon watershed and the remaining pounds from the Sengekontacket watershed to meet the 450-pound removal offer (release of 15 percent of the bond); and
- 5) the successful completion of the fifth, sixth and seventh years' performance of sampling, successfully meeting nitrogen loading goals and at least two years' sampling of all upgraded wastewater systems to document the removal of the offered weight of nitrogen loading from the Lagoon and Sengekontacket Pond watersheds (release of the final 25 percent of the bond).

Marcia Mulford Cini, a Commission member at large from Tisbury, remarked that she was not quite sure how a performance bond would work in this case. "Are we saying that on the off chance that the Applicant, if approved, gets into this program and doesn't dig the wells and do the lysimeters as required, the bond proceeds would be used to do it?" she asked. Mr. Wilcox replied that he did not know. Ms. Cini emphasized that she wanted to make sure that the money for the performance bond was there for a reason that was not punitive.

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Mr. Wilcox explained, "When I had come up with this concept, it was intended to be sort of a stick and sort of a carrot, too. Essentially, when it's done, you get part of the carrot back. If they weren't done, they get the stick."

Ms. Cini said that her understanding was that if the samplings did not meet certain threshold requirements, the golf course would be shut down. "It's not about paying. It's about not doing," she observed, stressing the last two words. Mr. Wilcox responded that perhaps that was still another option. "That might be a better way of approaching this than a performance bond, which I only recently found out can be acquired like you acquire insurance," he said.

Oak Bluffs Selectmen's Appointee Kenneth N. Rusczyk noted that he thought that the payment of a performance bond was to ensure that the land could be restored if the developer "went belly up" mid-project. Several Commission members said at once that this was not the kind of thing that Mr. Wilcox had had in mind.

Mr. Israel confirmed with Mr. Wilcox that there would be no testing for the Sengekontacket watershed because that pond flushed well. It was his understanding, though, that there were, in fact, arms of Sengekontacket that were relatively stagnant. "My question is, do you recommend that we have some kind of testing for Sengekontacket?" he asked. "No, I don't think so," answered Mr. Wilcox, "and the reason is simply because it does flush so much better than the Lagoon."

Mr. Wilcox explained that most coastal ponds produced and exported nutrients in the form of particulates (phytoplankton) out into Vineyard Sound or Nantucket Sound. "Sengekontacket actually imports it from Nantucket Sound," he said, "so at least a large part of the pond is sort of under-productive." However, he added, if you were to go into Trapps Pond, you would find it more nutrient-affected and somewhat more eutrophic.

The impact of the golf course on Sengekontacket Pond, Mr. Wilcox continued, would be somewhere near the outer part of Majors Cove where it opened up into the pond up to the north to the northern end of the pond. "And I think that's pretty well flushed," he said.

Mr. Israel referred to the fact that it could take several years for possible effects of the golf course on the groundwater to become apparent in the samples. So if the golf course were shut down, he wondered, would the flow of nitrates continue for a number of years? "Yes, a number of years at that concentration," replied Mr. Wilcox, "and I think the way you go after that would be to use the environmental insurance policy ... to require the installation of a series of water withdrawal wells that would create a sort of curtain of withdrawal of groundwater that had the nitrogen in it pumped back up and applied to the turf at the golf course."

Ms. Sibley stressed that now was the time to work out the details of elements like the performance bond and the environmental impairment insurance policy. "I think we need to either perfect it now or specify exactly who will work on it when, to make sure it gets

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worked out," she said. Ms. Greene suggested that Staff could be asked to do that before the next Meeting. "But Bill [Wilcox] has already said that he knows nothing about performance bonds," argued Ms. Sibley. "We need to know the amount, that's what we ought to figure out," stressed Ms. Greene. A discussion of this point ensued.

Mr. Woodruff confirmed with Mr. Wilcox that the latter considered Majors Cove to be fairly well flushed. Mr. Wilcox explained, "Majors Cove itself, particularly toward the inner end, toward the west, has sort of a conveyor-belt type of circulation, where the water goes out at the top and comes in at the bottom. So that there's an opportunity for nutrients to build up in the bottom water and create lower water quality. It hasn't gone to the point of being a problem in my experience, which is a little bit limited."

Mr. Wilcox added that there were still some eelgrass patches left in Majors Cove, whereas in the outer part of Sengekontacket Pond, they were gone completely. "So it's not so bad that it's driven the eelgrass out of there [Majors Cove]," he said. Furthermore, although he could say that the water in Majors Cove did not circulate as well as in the rest of Sengekontacket, he did not have enough information to be able to put a separate flushing-rate time on it.

James Athearn, a Commission member at large from Edgartown, wanted to know why Mr. Wilcox was recommending only 10 years of testing on Lagoon Pond. "I guess I don't have a really good answer for that," responded Mr. Wilcox. He explained that if there were some impacts to the groundwater that would show up in the wells and in the Lagoon soon thereafter, the timeframe for that process would be somewhere around five years and maybe as much as 10 years.

Mr. Athearn remarked that Mr. Wilcox was assuming that the turf management practices would not change during that period. If the practices were to be changed, noted Mr. Wilcox, the nature of the monitoring program would change.

Roger Wey, the County Commission representative, said that he shared Ms. Sibley's concern about the performance bond. Robert Zeltzer, a Commission member at large from Chilmark, said he was wondering if the Commissioners should be looking at Mr. Wilcox's revised recommendations dated January 16, 2002. After some discussion, it was agreed that they would finish with the January 14 document first.

Megan Ottens-Sargent, the Aquinnah Selectmen's Appointee, had a question about nitrogen withdrawal levels, and Mr. Wilcox answered that this would be covered in Item 36, which concerned the environmental impairment insurance policy.

Christina Brown, a Commission member at large from Edgartown, wondered if the purpose of the performance bond and the environmental impairment insurance policy was to reward good performance or was it also to correct problems or to finish the golf course or to return the site to its natural state. She suggested that a subcommittee of two or three Commission members be formed to work out the details of those documents.

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Mr. Toole expressed agreement with this suggestion, as did Mr. Donaroma, who added the idea of having Executive Director Charles Clifford sit on the subcommittee as well. After a brief discussion, a subcommittee was formed consisting of Ms. Cini, Ms. Greene, Mr. Clifford and Richard L. Taylor, a Governor's Appointee to the Commission.

With regard to Item 31, Ms. Warner recommended that after a period of 10 years the tests should continue to be performed, although not as often. "That could be done," said Mr. Wilcox.

As for Item 33, Ms. Warner wanted to know what the consequences would be if the water level in the observation wells was not satisfactory. Mr. Wilcox answered that the Applicant's models had indicated that the water table should not drop more than four-tenths of a foot at the margin of the property, "My thought is that they would have a series of trigger points," he said.

Mr. Wilcox then provided some examples. For instance, if the drawdown hit three-tenths of a foot, the party taking the measurements would notify the Applicant, who would then modify his irrigation practices for the purpose of reducing the water consumption. If that did not work and the drawdown hit four-tenths of a foot, there would be a second level of response.

Finally, related Mr. Wilcox, if the drawdown exceeded four-tenths of a foot, the Applicant would be required to reduce water withdrawal in proportion to the amount by which the drawdown exceeded the four-tenths of a foot limit. So if the drawdown went to five-tenths of a foot, or 25 percent over the limit, then Applicant would have to reduce his water withdrawal by 25 percent.

"How would the base number be set?" asked Ms. Warner. Mr. Wilcox explained that the wells on the golf course would be tied into a well in the middle of the State Forest that he had been monitoring for 25 years. With perhaps as little as one year's worth of data, he noted, the base relationship could be calculated. Then they could take the normal seasonal changes out of the picture, thus having a good measurement of the water withdrawal attributable to the golf course. Mr. Wilcox provided additional examples.

Ms. Warner referred to recent drought conditions and wondered what effect that would have on establishing the relationships between the State Forest well and the Applicant's three wells. Mr. Wilcox explained that the levels went up and down annually and that this relationship between the Club's wells and the State Forest well would occur in certain proportions prior to the withdrawal of water for the golf course.

Ms. Warner wondered what would happen if the Island had "drought upon drought upon drought." Mr. Wilcox responded that a drought would be an act of God about which one could do little, except cut back on pumping. "Is there going to be a condition that responds to that concern?" inquired Ms. Warner. "I'll give it some thought," replied Mr.

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Wilcox, "but I honestly, off the top of my head, I don't know how you would condition that. I guess it could be worked out." Chairman Vercruysse remarked that the Oak Bluffs Water District administration would be keeping an eye on the well levels during an extended drought.

Mr. Zeltzer wanted to know how long readings had been available from the State Forest well. Mr. Wilcox answered that he thought it had been 22 years. And what had the variation been during that period? asked Mr. Zeltzer. "From highest high to lowest low, it's maybe been 7 feet," replied Mr. Wilcox, who added, "On an annual basis it's more like 3 feet. It goes down 3 feet, comes back up 3 feet."

Ms. Greene pointed out that the Town of Oak Bluffs had a watering ban bylaw. Thus, if a ban was put on, the Applicant would not be able to water the course, she said. When Ms. Sibley noted that the Applicant would not be using Town water, Ms. Greene suggested that the Applicant's water withdrawal be tied in somehow with decisions made by the Town about its own water supply.

Mr. Donaroma said that he got the sense that there should be a series of warnings as a drought condition continued, and he wondered if there could be some trigger which when reached would just shut off the Applicant's irrigation practices. Ms. Warner wanted to know who would tell the Applicant that that point had been reached.

Mr. Wilcox answered that the Watershed Protection Committee would handle that. He added that in the case of a drought, it was not likely that a couple of irrigation wells in the middle of the aquifer between the two ponds was going to drop down the water table to the point where the saltwater would come flowing in.

"We should be able to have the ability ... to shut the course off long before that happened," proposed Mr. Donaroma. Mr. Wilcox responded, "I don't think it will happen," emphasizing the word "will." "Right," said Mr. Donaroma, "so why not put [in] the ability to do it. That way we'll never use it, but at least we've got the ability."

Ms. Ottens-Sargent voiced concern that turf that had become brown from lack of water would be more vulnerable to disease. She also mentioned the manmade ponds that the Applicant planned for the storage of water. Could the Commission condition that the Applicant had to have a bigger reservoir? she wondered. Mr. Wilcox explained that during a drought an open reservoir would lose a lot of water through evaporation. If the Applicant were to put the water in a reservoir with a relatively small surface but great depth, that might be a good idea, he said.

Ms. Sibley expressed her concern about the wetlands in the event of a prolonged drought. According to the testimony of one of the Shellfish Constables, she recalled, the far end of the Lagoon was relatively more dependent for its flushing on the influx of freshwater than from saltwater tidal flows. [See the testimony of Tisbury Shellfish Constable Derek

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Cimeno on pages 26 and 27 of the Full Commission Meeting Minutes of October 18, 2001.]

"It's an interesting theory that he [the Shellfish Constable] floated," responded Mr. Wilcox, "but I don't know of any evidence to support that. Clearly, freshwater coming into a coastal salt pond carries nitrogen with it, and to a certain extent the reduction in the flow might reduce the nitrogen actually entering the system to a certain extent. And it's also possible it might not."

Mr. Wilcox noted that there had been talk at one point – he was not sure if it was during the Remand Plan process or during the earlier Application process – about monitoring wetlands. "Then I would like to ask you to write a condition that addresses that," said Ms. Sibley.

Mr. Woodruff observed that a 4-acre pond drawing 180,000 gallons a day would result in an inch and a half of drawdown per day, 10 inches per week and 40 inches per month. "For what it's worth," he said, "if it's a shallow pond, it's not going to take too long, you know, a 10- or 12-week drought, to suck it down."

Mr. Donaroma stressed that the experts had assured them that there was plenty of water at this location. "I mean, should we have them test to see what happens if a meteorite hits too, while we're at it?" he wondered, adding, "This is getting crazy." Mr. Donaroma pointed out that Mr. Wilcox was politely trying to tell the Commission that there was not a problem. "I don't see the scientific evidence that warrants this," he said. "I hear him. I don't know why anybody else doesn't hear him."

Mr. Israel observed that although he too could hear what Mr. Wilcox was saying, he also liked to draw his own conclusions, inferences and opinions. He then asked how the introduction of nitrogen and changes in salinity would affect fry in the Lagoon. Mr. Wilcox answered, "I would argue that you need to put in perspective the 290,000 gallons or so a day being pulled out of the aquifer for irrigating the turf with the I don't know what – I can give you a number at the next meeting, it might be millions of gallons, it probably is tens of millions of gallons – that enters the Upper Lagoon Pond and the shoreline of the upper end of the pond on a daily basis from the aquifer itself."

Ms. Ottens-Sargent asked Mr. Wilcox if it would be reasonable to have a condition requiring that someone monitor the wetlands. "I'm not a wetland biologist by any means," replied Mr. Wilcox, "but yeah, I think it's easy enough to do. I think there are people that by looking at the plots that are set out and [at] fixed locations on a repeated basis could make a determination of whether they're being affected or not."

What he did not know, Mr. Wilcox added, was how they would sort out the effects of natural drought from the effects of the golf course pumping. Ms. Greene said, "I would suggest that that's the case and there's no reason to write the condition." Mr. Israel countered that he thought it was proper to raise the issue.

Chairman Vercruysse referred to the testimony from Oak Bluffs Selectmen wherein they were considering asking the Applicant to allow wastewater to be sprayed on the course. [See page 10 of the Full Commission Meeting Minutes of December 20, 2001 and pages 5 to 6 of the Full Commission Meeting Minutes of January 3, 2002.] "Gray water," stressed Ms. Greene. "Treated water," said Mr. Donaroma. The Chairman continued, "I assume that's going to really change the whole nitrogen calculation on the course. And if we're going to, if we're asked to consider conditioning that in this vote -- so have you thought about that at all, what that would mean?"

Mr. Wilcox replied, "No, I mean they are irrigating the practice range with their own treated wastewater, and their assumptions have been all along that the turf would remove all but 10 percent of the applied nitrogen, and I think seasonally that's probably reasonable. And I think the key would probably be to determine what the nitrogen is that's coming in in the Town wastewater stream and being applied to the golf course and to reduce the turf fertilization program accordingly. And we could condition it along those lines."

So they would have to be tied together? asked the Chairman. Right, responded Mr. Wilcox, if the Selectmen's plan were accepted, that factor would have to be looked into.

Mr. Wilcox added that the effluent coming from the Town would likely be similar in composition to that coming from the Edgartown plant -- 2 to 3 parts per million. Although this was not very much, he explained, if one started to apply thousands and thousands of gallons of the effluent to the course each day, it could add up to a significant amount.

Chairman Vercruysse said he assumed that since the Selectmen's plan was entirely hypothetical, the Applicant would have to return for a Modification of the Decision if the agreement with the Town were to be worked out. "I'm not sure legally how it would work," answered Mr. Wilcox, adding, "You could write a condition that says that they would reduce the applied nitrogen and fertilization program according to the amount of wastewater and the concentration of nitrogen coming in from the wastewater treatment plant."

Ms. Greene recommended a simpler way to do it: the Discharge Permit that the Town would have to receive from the DEP would stipulate that the nitrogen concentration not go above a certain level. "And that's the number we should use," she said.

Turning to Item 36, Mr. Wilcox explained that this section was an attempt to identify the items that would be considered in determining the amount of an environmental impairment insurance policy. These were: groundwater nitrogen concentration exceeding guidance limits; lysimeter nitrogen concentration exceeding guidance limits; water table drawdown in excess of four-tenths of a foot off-site; performance of the wastewater

denitrification upgrades; and the development of poor water quality conditions having detrimental effects on the M.V. Shellfish Group hatchery.

Mr. Wilcox then remarked that, "quite honestly," the link between those items and the golf course operation would be difficult to make. "But I think that by having the lysimeters, the wells along the edge of the shore and the sample stations in the Lagoon, we can address that," he concluded.

Mr. Toole wondered if the same criteria would be applied to Sengekontacket Pond. Mr. Wilcox replied that the monitoring program as developed thus far had not been designed to extend over into the Sengekontacket watershed, although it was possible to do that.

Ms. Ottens-Sargent asked about factoring in the impact of the Applicant's offer of a nitrogen-offset program involving properties other than the golf course. Mr. Wilcox explained that by reducing the nitrogen coming from the existing sewage systems, the Applicant would be limiting the impact of those systems, "and so if you see some impact in the pond, it's more likely to be attributed to the golf course itself as a new nitrogen source."

Ms. Ottens-Sargent wanted to know if that impact could be included in a condition. Mr. Wilcox responded that he did not know how such a condition could be worded other than to accept the Applicant's offer of the nitrogen-offset program and that the expectation would be to improve the water quality of the system.

Turning to the cost of denitrification systems, Ms. Ottens-Sargent wanted to know if the \$50,000 annually for five years that Mr. Wilcox was suggesting would be adequate to cover those upgrades. "But if we're talking about a nitrogen budget where we're trying to offset what might be coming from the golf course," she continued, "how can you attach a figure, an actual numeric figure, to the cost of upgrading individual systems?" Mr. Wilcox responded that the cost of a Bioclear system and its installation was a known quantity, somewhere between \$8,000 and \$12,000.

Mr. Wilcox emphasized that the bigger question was if the Commission would be conditioning the number of pounds of nitrogen to be removed or the amount of money to be invested in the system upgrades. "As I see it," he observed, "they have overestimated the amount of nitrogen they will get removed by each upgrade. So I'm not sure the \$50,000 is going to cut it when you start talking about 1,500 pounds of nitrogen being removed from the Lagoon."

Ms. Ottens-Sargent wondered if what the Commission should then be conditioning was the number of pounds of nitrogen to be removed. Mr. Wilcox responded that there was probably no easy way to figure that out since, for instance, an upgrade of a seasonal house would remove less nitrogen than the upgrade of a year-round house.

Ms. Ottens-Sargent also pointed to the relatively lower efficiency and functionality of the systems used seasonably. Mr. Wilcox suggested, "I think the only way to go at this is, rather than a dollar figure limit, is to go at it in terms of pounds." He added that in order to get poundage, one had to measure the systems, including both flow and nitrogen concentration, which was already a requirement of such systems.

Mr. Woodruff had questions about the longevity of the alternative septic systems and what would guarantee that a) the systems would be maintained properly after installation or b) that this type of system would continue to be used after the ones initially installed had to be replaced. Mr. Wilcox agreed that the maintenance of such systems was expensive, especially in the first few years of operation. He noted that the Town Boards of Health would have to develop a whole inspection program after these systems came on line.

Mr. Donaroma pointed out that the purchase of the denitrification systems was "a package deal," that is, one price for the equipment, the installation and the maintenance. Also, he said, the Board of Health in Edgartown required regular inspections. However, neither he nor Mr. Wilcox knew how long that maintenance contract would run. Mr. Donaroma also stressed that in some cases currently, raw sewage was being dumped into the ground less than 200 feet from the Lagoon. "This [the offset program] is a gift," he said.

Mr. Woodruff inquired if there was good baseline data available for the existing systems, such as the one at the Island Elderly Housing complex. "I don't think we do know," replied Mr. Wilcox. "There are no flow devices. What they [the Applicant] did in the second go-round of nitrogen estimates, instead of using the Title V flow, they used I think it was a 60 percent of the Title V flow, which is, I think, much closer to the reality of most systems. But it's not a flow measurement. So it's, you know, in the ballpark. It's probably right within 10 percent."

Mr. Wilcox added that they also did not know the current nitrogen concentration of the effluent coming from the systems. "I think they assumed 35 parts per million, which is a pretty good number," he said.

Mr. Woodruff wondered if there was a way to establish a baseline prior to the upgrading of the systems. "I suppose you could condition it that way," answered Mr. Wilcox, who continued, "I think another way to go at it is just make sure there's a comfortable-enough margin of safety in the number of pounds that they remove over the number of pounds that they'll be loading the watershed by, so that you accommodate those kinds of estimations."

Mr. Athearn requested that Mr. Wilcox explain how a denitrification system worked. Mr. Wilcox did so. The difference between such a system and a Title V system, he explained, was that the denitrification converted the ammonia to nitrate, then sent it into an anaerobic (no-oxygen) environment. The bacteria that lived in that environment stripped

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the oxygen off the nitrates for energy, and the nitrogen then went off as a gas being released into the air.

In the case of a re-circulating sand filter, Mr. Wilcox went on, the effluent went into the sand filter, where it was saturated. With the air gone, the removal of the nitrates occurred right there, he said, adding that then the effluent was cycled back into the septic tank and went through the process a number of times. Finally, he said, it went into the leaching field.

In terms of how much nitrogen such a system could reliably remove, noted Mr. Wilcox, a study being done at Otis Air Force Base had found that some of the systems had not been removing as much nitrate as had been expected. He also stressed that the re-circulating sand filter type of system seemed to be the one that worked the best, getting the effluent down to around 19 parts per million from a 35 ppm starting point.

Other systems, like the Bioclear, said Mr. Wilcox, relied on little pieces of plastic in a big tank, with the wastewater being sprinkled onto the plastic pieces, and bacteria and algae then growing on the pieces and taking out the nitrogen that kept feeding them from the wastewater. These systems also got the nitrogen level down to 19 ppm or a little less if they were maintained well, he concluded.

Mr. Athearn wanted to know if such systems had any known tendency to break down. Mr. Wilcox replied, "I think with seasonal use they've found that it takes a few weeks for them to spin up and get up to speed, with the bacteria digest[ing] the waste. It may take as much as six weeks to get going. So seasonal systems don't work as well." Although he speculated that there might be ways to get around that problem, he said he did not know of any that were reliable.

Ms. Warner thought it would be wise to get into this matter further because a client of hers had bought a re-circulating sand filter system that required \$3,000 worth of testing annually. "I just think before we say, 'This is this great thing,' we need to get it into a little better shape," she said, "because otherwise you're taking a person who for some reason has not upgraded their septic system, perhaps [for] financial reasons, and now we give them this fancy new thing and they can't afford the testing on it."

Mr. Wilcox moved on to Item 37, which covered funding for monthly sampling of the upgraded denitrifying sewage disposal systems. He pointed out that he had recommended that the testing occur during the months that the owner's home was occupied. He added that he believed the Town of Oak Bluffs required six monthly samples and then reduced that to quarterly samples. "That seems like a reasonable way to go at it to me," he said, suggesting that the first sample be taken in May.

John Best, a Commission member at large from Tisbury, noted that those were the State regulations that the Town of Oak Bluffs was complying with. As far as he knew, he said, all the Towns were adhering to those regulations. He suggested that perhaps the

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Commission should back off on stipulating the testing that was required because 1) the regulations would be subject to change under DEP review; and 2) some of things for which testing was required were completely inappropriate for systems on the Vineyard. The most costly thing to test for, he believed, was volatile organics.

Mr. Wilcox stated that all they should really want to know was the amount of flow and the concentration of nitrogen. Mr. Best agreed, remarking that it would be inappropriate to police the homeowners, who had voluntarily offered to have their systems upgraded. Ms. Ottens-Sargent wondered, though, if the Commission could change the DEP's standards. "No, you have to adhere to DEP standards for now," said Mr. Best. Ms. Warner suggested that for seasonal users of the systems testing be done four times over the summer instead of quarterly.

Ms. Greene expressed the opinion that DEP would in the future relax some of the VOC requirements on the Vineyard because most of those compounds did not exist on the Island.

Ms. Sibley inquired if Mr. Wilcox had a better idea for perhaps a slightly lower-tech solution that would accomplish the same goal with less risk. "Composting toilets," replied Mr. Wilcox. "They take care of themselves and they take all the nitrogen out."

Mr. Donaroma emphasized that at that moment there were older systems already polluting the Lagoon. "I guess some of the reasons are they can't afford it and you can't make them do it unless they expand bedrooms or something," he observed. "We have an opportunity to do it, and it's going to be paid for." "For what it's worth," interjected Ms. Sibley. A discussion ensued.

Mr. Israel stressed that it was supposed to be a quid-pro-quo situation in a sense, with the nitrogen offsetting canceling out the impact of the golf course. Moreover, as a community, he said, they ought to be working on a Town-wide management plan.

Mr. Wilcox turned to the last page of the January 14 document, which outlined the composition and functions of the Watershed Protection Committee. "My thought is there are too many members there," he commented.

Mr. Rusczyk said that he agreed that the committee had too many members, and he suggested that since the enforcement would lie with the Towns, members like the M.V. Shellfish Group, the Division of Marine Fisheries and the Oak Bluffs, Edgartown and Tisbury Shellfish Departments might become *ex officio* or advisory members. Thus, the core committee would consist of one member from each of the following: the Down Island Golf Club; the Oak Bluffs Board of Health; the Lagoon Pond Association; the Oak Bluffs Conservation Commission; and the Friends of Sengekontacket.

Ms. Sibley recommended "respectfully" that there needed to be enforcement officers from Tisbury and Edgartown as members of the committee. "So do you want the Board

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of Health from the three Towns?" asked Ms. Greene. Ms. Sibley responded that she was unwilling to argue the point beyond her position that all three of the Towns had to be represented. "I don't have a problem with that," commented Mr. Donaroma.

Mr. Israel pointed out that since the amount of work being asked of the committee was "mind-boggling," he was not convinced that a single committee would be able to handle all of the functions. "Having said that," he continued, "the larger membership might help that situation." Ms. Brown and Ms. Warner agreed.

Mr. Zeltzer remarked that it appeared to him that there would be a testing expert retained by the committee to act as its advisor. "So that the great bulk of the work we're referring to is done by this individual," he said. "The group will then hear what he has to say and take appropriate action and make appropriate recommendations."

Ms. Cini recommended that someone from the Town of Oak Bluffs Water District be a member of the Watershed Protection Committee. Three other Commission members murmured agreement. Mr. Wey suggested that the three Shellfish Wardens should be part of the committee. Ms. Brown agreed.

Mr. Toole called for a short recess. The time was 9:06 p.m. The LUPC session resumed at 9:14 p.m.

Continuing with page 6 of the January 14 document, Mr. Wilcox said that one of the first things the committee had to figure out was the amount of recharge (which was carrying the nitrogen) on the golf course turf, since this was the way one would calculate what the loading from the site would be. Island-wide, he continued, the U.S. Geological Survey figured the recharge to be 22.2 inches annually. The figure proposed by the Applicant, he said, was closer to 30 inches a year. Using the Applicant's larger number would result in a larger calculation of nitrogen loading, providing a margin for error.

The second thing Mr. Wilcox was recommending was that the committee set key trigger points for each monitoring program, with the initial level requiring a review of related golf course management practices to identify potential correction measures. This would apply to the lysimeters and the observation wells (for drawdown), as well as to the monitoring wells in Lagoon Pond sample stations. Mr. Wilcox then read aloud the entirety of Item 3 on page 6 of the January 14 document.

Ms. Warner asked, "How would you include the drawdown aspect in the insurance policy? What would be an example of how they could claim, make an insurance claim on behalf of the Town on a water level?" Mr. Wilcox replied that he envisioned it this way: that a) if the drawdown exceeded the drawdown promised by the Applicant; b) it had some effect on Lagoon Pond Well; and c) it cost the Town money to either draw more water from one of their other wells or perhaps put in a new well in another location, the insurance would cover that eventuality. "I think it's an unlikely eventuality," he added.

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Responding to a question from Mr. Athearn, Mr. Wilcox said that he believed there were only two wells on the course site itself.

B. Wilcox Discussion Points for Possible DIGC Conditions: January 16, 2002.

Mr. Wilcox moved on to the January 16 document, which he described as a rehash of the January 14 material where he had tried to organize the material into conditions offered by the Applicant and then modifications to the Applicant's offers. He proceeded to go through the items one by one under the first category.

Regarding Item 4, Ms. Ottens-Sargent wanted to know if the 3 milligrams-per-liter figure was the standard set by DEP. "DEP will limit that to 10," replied Mr. Wilcox, "and they've [the Applicant has] said they'll hit 3. I'm suggesting we hold them to that."

Mr. Donaroma had a question about Item 7: Was the limit on water table drawdown what they had been talking about? And if they exceeded those numbers, what would happen? Mr. Donaroma stated that, in effect, this item answered earlier questions about triggers. Mr. Wilcox stressed that if the water table was drawn down by more than four-tenths of a foot, it would be time for a Cease and Desist Order. "It may not be permanent," he noted. "It might just be shut down until things went back to normal."

Ms. Sibley pointed out that this went back to Ms. Warner's question. "Since this is relative to the normal seasonal variation in the water table," she said, "if you have a prolonged drought and there's a four-foot drop in the water table due to natural circumstances, they're still allowed to draw it down by point-four feet relative to that. I want to be clear whether or not we're comfortable with that."

Regarding Item 3, Ms. Greene suggested that the term "total nitrogen" be used instead of simply "nitrogen." Mr. Wilcox agreed.

Mr. Israel had questions about the ponds on the course. Mr. Wilcox explained that he had envisioned the Applicant using the ponds as a sort of reservoir. "They would pump whatever their limit is – let's say it was 250,000 gallons a day – and they would fill the ponds with that," he said, "and then when they needed to irrigate 300,000 gallons a day, they would draw 50,000 additional gallons out of the ponds and use their limit to bring it up to what they need."

Mr. Israel wondered what would happen during times of withdrawal from the reservoirs to the "critters" who had been drawn to the site because of the introduction of surface water. "I don't have a good answer for that," answered Mr. Wilcox, "but I guess those critters are able to get by drought periods when wetlands dry up pretty much. They migrate. But there would be an effect, yeah."

Ms. Greene recommended that at some point the Commission had to put in a condition stipulating that the Applicant had to meter the water they were pumping. "Yes," said Mr.

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Wilcox, "I think it needs to be inserted here. The way we did it with the other golf course was they put in a fixed orifice flow-control device that would create a limit on what the pump could pump."

Mr. Woodruff returned the discussion to Mr. Israel's last point. Mr. Wilcox, he said, was recommending a 290,000-gallon-a-day limit on pumping, while the Applicant had originally asked for 450,000 gallons daily. If the Applicant used up his limit and had to draw from the ponds, he remarked, it was not going to take long to use up the reserves, especially considering that the Applicant had submitted no information about the depths of the ponds.

On the other hand, Mr. Woodruff continued, the biologist on the Applicant's team had spoken about the introduction of surface water increasing the biodiversity of the site. So what really were these ponds being used for? he wondered.

"I don't have a real good answer for it," responded Mr. Wilcox. "Their estimate was that they would need, I think, 293,000 and some odd gallons on average during the dry month of the year, July. That's where my 290,000 limit came from. And I had figured if they need 30,000 gallons more than that or 50,000 gallons more than that a day, they would take it out of the pond. You know, an acre-foot is 325,000 gallons. So if you've got a 7-acre pond and draw it down a foot, that's 2 million gallons, that's a lot of days' worth of irrigation."

Mr. Woodruff expressed his concern that in the event of a severe drought, the Applicant was going to need more than 300,000 gallons of water a day. "They may," agreed Mr. Wilcox. "And that pond could empty really fast," added Mr. Woodruff. Mr. Wilcox nodded.

Mr. Toole wondered if Mr. Wilcox could find out any more about this matter. DRI Coordinator Jennifer Rand pointed out that the Commission had the data from the Farm Neck Golf Club. Mr. Wilcox said he had obtained the withdrawals from the Farm Neck Golf Club well. That club had used just about a total of 9 million gallons one July, he said, which came out to a little under 300,000 gallons per day - 293,000 gallons. "That was in the year 2000," he added, "and my rain gauge in West Tisbury was about an inch below, maybe a little less than an inch below, normal for the month of July. So it was a dry month, not really dry. I wouldn't call it a drought at all."

Mr. Wilcox continued that in June 2000 the Farm Neck Golf Club had used about 137,000 gallon per day and in August, about 183,000 gallons daily. "But August was very wet," he noted. "And then it falls off from there in both directions. I realize that's only one year."

How did the Farm Neck Golf Club compare in acreage to the proposed Down Island Golf Club? inquired Mr. Best. "I don't have an acreage figure on the Farm Neck golf course,"

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answered Mr. Wilcox. "I think it might be bigger," said Mr. Best, to which Mr. Wilcox replied, "I think so too." Ms. Sibley agreed that Farm Neck had more managed turf.

Mr. Toole wanted to know if there was any way to find out how big the ponds would be. "But if we restrict the water way down, the ponds will get deeper," noted Mr. Donaroma. "That's their problem," he added, stressing the word "their."

Mr. Wilcox then read through Items 9 through 17 under Condition 1 of the January 16 document. "So this isn't everything they offered," he said, "but these are all the items that relate to water resources, and I'm sure I left a few out."

Ms. Ottens-Sargent asked if there was anything in the record about pesticides being used that could affect moths. "Yes, some of the pesticide products that they have are intended to control caterpillars that are in the turf," replied Mr. Wilcox. "They wouldn't be sprayed into sites off the turf. They'd be focused on the turf. There might be some drift. Typically these applications are made early in the morning when drift is a limited factor. I don't know. I would assume that they could have some effect on other caterpillars, non-target ones, but only if they were within the area that was sprayed or close enough to it so that they'd get a lethal dose."

Would the Applicant be using specific pesticides that could harm imperial moths? asked Ms. Ottens-Sargent. Mr. Wilcox pointed out that there had never been a control program for the imperial moth. What about gypsy moths? wondered Ms. Ottens-Sargent. Yes, that would affect the imperial moths, responded Mr. Wilcox, because if you were going after gypsy moths, you would be spraying in the woods. He added that he thought this possibility was limited. "But nobody really looked into it?" inquired Ms. Ottens-Sargent. Mr. Wilcox answered, "Not that I'm aware of," adding that he did not recall having seen anything about this in Mark Mello's report.

Mr. Woodruff remarked that although they had discussed organic pest management, they had not talked much about organic fertilizers. "I know that in everything they've submitted it seems to be that the prevailing fertilizer is inorganic," he said. "I think at some point we need to discuss that."

"I can't give you numbers or proportions off the top of my head," replied Mr. Wilcox, "but there are organic materials that are clearly organic, there are inorganic materials that are clearly inorganic, there are some that are sort of in the middle. There's a mix of water-soluble ones and water-insoluble ones that are slow-release, and I don't know what I can say beyond that off the top of my head."

Mr. Woodruff proposed that there was "a whole lot more to an organic golf course than just the ..." His voice trailed off. Then he continued, "In fact, I would argue, I would be more inclined to approve limited pesticide use to control diseases that you couldn't control by organically managing the soil.... I think this whole approach is backwards." Mr. Toole suggested that Mr. Woodruff talk to Mr. Wilcox outside of the meeting.

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Mr. Israel suggested that at a future LUPC session the Commission members look at and discuss the lists of pesticides and fertilizers offered by the Martha's Vineyard Golf Partners (DRI #484).

Ms. Sibley returned to the subject of moths. "Generally, it's been presented that the woodland is going to be left alone," she said. "Is there any assurance that there will be no pesticides used there?" she asked. Ms. Sibley pointed to the possibility of a gypsy moth infestation. "They don't bother pines," said Mr. Donaroma. Ms. Greene noted, "They only get into the oak trees." Ms. Sibley expressed the concern that if one were trying to control gypsy moths, there was some chance that spraying would go on in the woodlands.

Mr. Wilcox related that organic controls for gypsy moths were being developed. "But I'm not talking about organics now," countered Ms. Sibley. "I'm talking about the risk to the endangered moths which are in the general area and, you know, again I'm sympathetic to management of the golf course but ... it could raise the danger to the imperial moth or whatever the technical name of those guys are.... I think we should look at that and consider that there not be any spraying in the woods."

"Seems to me on the other golf courses we basically said 'No 'cides,'" observed Ms. Greene, adding, "I don't know why we're not addressing this the same way." "But we did allow organic pesticides," said Ms. Ottens-Sargent. "Yes," said Mr. Wilcox, "and I think they got the message and their list, I think, is pretty much organic." Mr. Israel recommended that the Commission go back to the lists submitted by other golf course Applicants. Ms. Greene suggested that a subcommittee be formed consisting of a few Commission members who were interested in this aspect of the proposal.

Mr. Donaroma remarked that in the Remand Plan the Applicant had bought more land and had moved the course around, mostly leaving alone the pine area where the moths were. "I think the Applicant made an effort to do that," he said. "So I don't have a problem with what Jennie [Greene] said. Just keep the pesticides, keep everything out of that area. I mean, he moved the golf course out of that area. Let nature take its course, people." A discussion regarding this matter ensued. Mr. Wilcox pointed out that the pesticides were not aimed at the moths in their adult stage, when they were flying around.

Mr. Donaroma suggested that those who had questions or doubts about the turf management plan should meet with Mr. Wilcox outside of LUPC session. "If you listen to the scientists and you listen to everybody's argument," he declared, "it still boils down to nitrates, whether it's organic or inorganic or synthetic. It's just a matter of which gets there faster. I mean, I think we've heard this testimony over and over again."

A discussion followed. Mr. Woodruff contended that if this was to be an organically managed course, there was "a whole lot of stuff that's missing that should have been submitted well in advance of the closing of these Hearings. I'll leave it at that." Ms.

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Greene recommended that each year the Applicant submit a list of the products that would be put on the course and that said list be reviewed by the Commission.

Ms. Brown recalled that in conditioning the Martha's Vineyard Golf Partners Decision, it had been agreed that the organic management plan would be worked out based upon general principles set down by the Commission and that said plan would be approved by the oversight committee set up by the Decision. "How'd that work?" she asked Mr. Wilcox, who replied, "Good in some instances and pretty lousy in others." He related that the Vineyard Golf Partners Applicant was supposed to have submitted an organically derived pesticide list. "We don't have it yet," he reported, noting, "Other parts of the organic turf management plan, I think, were okay."

Mr. Wilcox then offered the opinion that soil-building was not in general a big part of planting the turf. "It's much more a big part of the greens," he said, "where they put a lot of material, and the tees, where there's heavy use. But on the fairways, where the uses are less, I don't think there's a huge amount of soil-building that goes on."

Ms. Brown wondered what Mr. Wilcox thought about designing a similar scenario in the case before them. Mr. Wilcox answered, "If the enforcement is there. That's the weak link on the other guy." "Put the Board of Health on your committee," suggested Ms. Greene.

Mr. Wilcox turned to Condition 2 in the January 16 document, where he had listed recommended modifications to the Applicant's offers. Regarding Item 1 thereunder, he pointed out that the monitoring of the course would not be done by the Applicant but would be independent. For Item 2 he remarked that he had increased the amount of funding that would be needed for the Watershed Protection Committee to \$55,000 by combining all the estimates that had been contained in individual items in the January 14 document.

Regarding Item 5, Mr. Wilcox emphasized that the 1,200-pound reduction in nitrogen in the Lagoon called for in the offset program would more than exceed worst-case-scenario loading from the proposed golf course. On the Sengekontacket side, the reduction was around 50 percent of the load, since Sengekontacket was more tolerant of nitrogen loading. "It's not at its limit yet," he said.

Regarding Item 6, Ms. Ottens-Sargent recalled that in a previous version Mr. Wilcox had included actual acreage figures for the aerial photography. "Oh, I might have included something about disturbed area in there, too," responded Mr. Wilcox, adding "I can reword that."

Ms. Sibley observed that the January 16 document seemed considerably pared down compared to the January 14 one. "Do you feel that you were just being too wordy last time and that there's really, that it's still just as precise?" she wanted to know. Mr. Wilcox answered that he had drawn up the later document hastily and that some of the

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abbreviation had come from his citing of the Applicant's tables. "It doesn't have to be wordy," he remarked. Ms. Sibley argued for greater specificity in the wording to ensure a proper interpretation by the Applicant. After some discussion, Mr. Wilcox assured Ms. Sibley that he would be looking carefully for any possible omissions.

Responding to a question from Ms. Ottens-Sargent concerning Item 9, Mr. Wilcox explained that the 290,000 gallon figure was very close to what the Applicant's average estimate was for the driest month. Just by serendipity, he noted, that figure turned out to be very close to the number that Farm Neck used in the year 2000 during the driest month.

Ms. Ottens-Sargent once more expressed concern about brown, unwatered grass being more susceptible to disease, and she wondered if there should be a qualifier in Item 9 to allow for more than an average 290,000 gallons per day. Mr. Wilcox said that he could do that. "You'd rather have the water than have to use herbicides and pesticides?" Ms. Sibley asked Ms. Ottens-Sargent, who replied, "Yes, especially if there's no harm to the aquifer groundwater surrounding the well."

Ms. Greene wanted to know if this would be considered a community water system by DEP. "No, because they won't be serving the public," responded Mr. Wilcox. "Because there's certain reportings they have to make to DEP if it qualifies for one of those," said Ms. Greene, who added, "They are providing water to the public in a sense that they're serving the community." "They're providing *Town* water," stressed Mr. Wilcox, "but they do, because they exceed a hundred thousand gallons a day of water withdrawal, have to file with DEP a Water Withdrawal Permit, and there's a couple of questions I still have to work out. I have to call DEP back to make sure that having two irrigation wells that pump at 90,000 gallons a day or 95,000 gallons a day will not trigger that."

Ms. Greene inquired if the Applicant would have to file an annual statistical report to DEP. Yes, they did, replied Mr. Wilcox. Then the Commission should require that that report be submitted to the Watershed Protection Committee, said Ms. Greene. Mr. Wilcox agreed.

Proceeding to Item 10 under Condition 2, Mr. Wilcox explained that TKN meant total nitrogen and that TCDD was a dioxin. Many compost materials, he related, were at least partly, if not entirely, sewage sludge composted with other materials, and depending on the kind of area the supplier serviced or sewered, the compost might contain metals. "I don't think that's a big issue," he said, "and I think it just assures that there's less likely to be any problems with either metals or any of these other materials."

Regarding Item 11, Mr. Wilcox noted that the reason the topsoil was to be kept on-site was to keep trucks off the roads. The final paragraph, he continued, was an attempt to replace the performance bond with the use of Town authority to issue a Cease and Desist Order. "So the thought is," he said, "that if they don't hit their numbers, if they exceed their numbers and they can't correct them based on hitting the earlier trigger points, that

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the committee would go to the Board of Health in Town in Oak Bluffs and they would issue a Cease and Desist Order to shut them down until they corrected them."

Ms. Sibley questioned whether the Town was likely to enforce the conditions. One option, she noted, would be to ask the Applicant to provide funds for an enforcement officer. In addition, she pointed to the absence in the January 16 document of language on how the Applicant would go about applying to use new products that might come on the market. Furthermore, Ms. Sibley asked for a mechanism for taking products off the list should scientific evidence develop that indicated that a particular product might be more detrimental than it was currently believed to be. Mr. Wilcox agreed that these last two were good ideas.

Mr. Israel wished to clarify whether the Commission was bound to one or other of the documents presented by Mr. Wilcox. "We're in the formation stage here," noted Mr. Toole. "I would just like to offer that I think Bill [Wilcox] did an excellent job, and I'd like to thank him for that," said Ms. Greene. The members applauded.

C. Jennifer Rand Possible Conditions for Discussion: January 17, 2002.

DRI Coordinator Jennifer Rand referred the members to her Staff Report entitled *Possible Conditions for Discussion: J. Rand - January 17, 2002. [See the meeting file for a copy.]* She related that at the prior LUPC session the members had requested that she go through the Application materials to see what the Applicant had offered as well as through the Minutes to pick up conditions based upon Commissioner questions.

Ms. Rand directed the members to page 3 of the document, where she had listed possible further conditions that were not actual offers from the Applicant. One of the reasons this section was short, she said, was that the Applicant had followed up with offers many of the conditions suggested by Commission members.

Returning to page 1, Ms. Rand pointed to the highlighted material where she had indicated that \$50,000 annually might not be enough to accomplish what the Applicant had proposed. She also recommended further discussion on the amount of the environmental impairment insurance policy.

The second group of conditions on page 1, Ms. Rand continued, contained various donations offered by the Applicant to various groups. The third group concerned conditions for employee housing. Pointing to the offer at the top of page 2 of a 40-year lease of Webb's Campground, she said that she was recommending the additional condition, on page 3, of a 99-year lease.

In addition, the Town of Oak Bluffs had requested an increase from 150 to 175 Island members, Ms. Rand went on. She had such an offer from the Applicant in writing, and it appeared near the top of page 2. Also in writing, she added, was an offer to provide to the public wood supplied by trees cut down during the course of construction.

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Moving down to the section on the Conservation Restriction, Ms. Rand had highlighted that the Applicant had indicated a willingness to name a second CR holder such as the Town of Oak Bluffs, but had wanted to discuss this with the primary CR holder, the Vineyard Open Land Foundation, first. "So I don't have anything in writing," she said. "I do know that they're willing to discuss that, provided that VOLF has no problem with it."

Turning to the next section on page 2, Ms. Rand remarked that the Applicant's proposal of one-to-one mitigation for the stand of pitch pine affected by the proposed course construction was still unclear to her. "I do know that, depending on how you read what they say, they feel they've addressed that," she said. "That was mitigation suggested in their original EIR."

Ms. Rand went on, "The suggestion was that they've addressed that by purchasing further land, and I'm still a little unclear on how that stands. But there's a condition on the second page that suggests that to limit the removal of existing wooded areas, if nothing else they'd relocate where Pond D is, and I have a map – it doesn't photocopy well – Pond D and Pond C are both located at the overlay of the golf course on the land that they have. They're both in very heavily wooded areas."

Ms. Rand concluded, "If they move Pond D particularly, and perhaps Pond C, to less wooded areas, this one-to-one mitigation may be close to being accomplished from their last submittal. They could both probably be put on some other hole and be just as fine. So that's a possibility."

Continuing down page 2, Ms. Rand noted that the Applicant had offered to look into solar-powered carts for the few club members who would use them and that she was recommending acceptance of that offer.

Ms. Rand reported that she also had in writing a statement from the Applicant that if the Remand Plan were approved, the Applicant would dismiss all golf course-related lawsuits at the close of the appeals period. She also had in writing from the Applicant that there would be no corporate memberships.

Moving on to page 3 of her report, Ms. Rand explained that Condition 2 addressed when the Conservation Restriction got filed – either prior to breaking ground for construction or at the close of the appeals period on Town approval. "It's something to think about," she said, adding, "It's something we're conditioning on a regular basis."

Concerning Condition 4 on page 3, Ms. Rand explained that the Applicant had submitted in their habitat assessment a monitoring plan. "We have done this in the past with other projects," she said, "that this monitoring plan be submitted and then we would submit it to a[n] independent third party for review to assure that the habitat monitoring plan is adequate. And upon that, then they would get a Certificate of Compliance from us. I

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think it's a good idea because we don't really have anyone here on Staff capable. I can read it. I don't know if it's adequate. So I think having a third party review the monitoring plan that they have submitted is probably important and should be conditioned separately."

"Are you saying that the third party is MEPA?" inquired Ms. Ottens-Sargent. "No, I'm not," replied Ms. Rand. She explained that the wording had been taken directly from another Decision and that it would have to be worked on. "This Applicant did submit their monitoring plan in their initial EIR," she said, "so it actually has been through sort of the initial MEPA filter, but my response to that is, 'That's great.' But habitat monitoring seems to be a real concern here. Let's have an independent third party report to us that it's an adequate monitoring plan and then it gets that additional filter that it hasn't had the benefit of having because we don't have Staff capability here to review it."

Responding to another question from Ms. Ottens-Sargent, Ms. Rand emphasized that in the Remand Plan the monitoring plan had not changed from what it was in the initial Application.

Ms. Brown requested that Ms. Rand remind her about what the Applicant had already submitted for a monitoring plan and whether it contained anything equivalent to what Mr. Wilcox had done on on-going monitoring and levels or responses if the monitoring fails, that is, "if the butterfly dies." Ms. Rand wondered if Ms. Brown was asking if there was a trigger that would come after that. Yes, replied Ms. Brown. "I don't have an answer for you," said Ms. Rand, adding, "Do we create that? Does a third party create that? I think that's a good question."

Ms. Brown noted that she did not think that had been done in the Vineyard Golf Partners proposal. Ms. Rand confirmed this and suggested that there must be a model somewhere from which she could take the wording. "It's not only monitoring, but it's response that we need," remarked Ms. Brown. Ms. Sibley pointed out that it might be important for Ms. Rand to specify when certain of these conditions were to be met.

Ms. Ottens-Sargent wanted to know if Ms. Rand had an overlay map of the course site showing, for instance, where the pitch pine stand was. "Yes, I do," replied Ms. Rand. "I have two maps. I have one showing the outline of the property. It's an aerial photo looking out over the property, and one is an aerial photo - it's the same photo, but their proposed hole layout is drawn on it."

Ms. Brown remarked that she did not want to build in conditions that were acceptances of offers which were not related to the land and the effect of the land on the community, namely the MV Aquatic Center and the Oak Bluffs Library.

Mr. Athearn wondered if the beech tree stands could be saved. Ms. Rand answered, "I don't see that at this time, particularly where it's way pre-construction, that the Commission is approving the exact layout of those holes. So certainly I would think that

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something indicating that the stands of beeches should, every effort should be made to preserve the stands of beeches and work around those – I don't think that's a big deal, because ... these hole are not going to be identical to this layout." Ms. Greene and Mr. Rusczyk agreed that the beeches should be saved.

"And I would say," declared Ms. Sibley, "that to the extent that they presented a layout to us and that we are approving the plan as presented or with modifications, that the, precisely what we should be concerned about is how the layout affects critical aspects of the land, whether it be the pitch pine stands or the beech trees.

Ms. Sibley continued: "And so in a sense I think that when we approve, we should know whether this is okay or whether we're saying to them that you have to come back to us with a changed layout that protects the following things. For us to say that we're not approving a specific layout would imply that the present layout might protect those things and then they could go change it without our permission."

"I think that's doable," responded Ms. Rand. Mr. Donaroma suggested wording a condition somehow that the Commission would work with the Applicant on trying to save the beeches.

Ms. Brown asked if Ms. Rand had an overlay map that identified the vegetation areas. "I don't know. I'll have to look," answered Ms. Rand.

Ms. Cini recommended that before the Commission got too far down the road with the 99-year campground lease, Staff might want to check the statutory restrictions on those terms. Mr. Rusczyk agreed that this should be looked into. "Is there any thought about extending the size of the campground?" inquired Ms. Greene. "You mean the number of campsites?" asked Ms. Rand.

Ms. Greene explained, "When it was discussed that there might be a trade at the last Hearing, there was the 20 acres that they talked about which was the 13th and 14th holes. But if you look at the plan, it would appear that we could perhaps extend the lease a little bit further." Ms. Greene then clarified that she meant extending the size of the campground. A discussion ensued about Ms. Greene's suggestion, and Ms. Rand said that she would verify how many acres were in the current offer of the campground and how many sites it would contain.

Mr. Zeltzer raised the possibility of somehow conditioning the Decision in a way that would encourage the Applicant to accomplish the land swap with the Town of Oak Bluffs without their having to come back before the Commission for a Modification. Ms. Greene suggested, "We can highly recommend that they negotiate..." Mr. Zeltzer interrupted and said that the Commission would have to let the Applicant know that the Commission would not require a second review. A discussion of this point followed.

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Mr. Best pointed out that the Applicant had placed some importance on the fact that the Remand Plan provided for a wildlife corridor running through the site. It seemed to him, he continued, that if the land swap were done, the holes moved from near the Lagoon would wind up on what was now the Town Parcel. "I'm not saying it's a good or a bad thing," he emphasized, "but to issue a condition that says that if they do it, it's okay is totally outside the public's purview. The public will not have heard that and they would not be able to give input. People who have commented on all these other aspects of it wouldn't have a chance, and I feel that's wrong."

Mr. Zeltzer reminded Mr. Best that the particulars of the land swap would have to go to Town Meeting and be subjected to a two-thirds vote. "I think that's a pretty good Public Hearing," he remarked.

Ms. Brown observed that she too had had the thought that if the Town Parcel were left untouched, it would provide a corridor. "But we have absolutely no assurance that the Town Parcel – and the Applicant can't tell us – that the Town Parcel will be left as a wildlife corridor," she said.

Mr. Best proposed that they also had to consider whether it was better to shift the managed turf from the Lagoon watershed to the Sengekontacket watershed. "That would be outside public scrutiny as well," he noted.

Mr. Israel agreed with Mr. Zeltzer that a two-thirds Town Meeting vote would be an interesting indicator of the public's opinion on the project. "Nonetheless, I don't think we can tell someone we're just not going to [review it], the change is made so we're not going to deal with it," he observed.

Mr. Rusczyk stressed that the land swap would put 24 more acres into the Conservation Restriction, "which I think is a huge benefit." In addition, the money realized by the sale would go to the Resident Homesite Committee for affordable housing, he said. "So I think that it's a win-win-win and the Town Meeting will get to discuss it and talk about it," he concluded. Ms. Greene said, "I would like to ask Staff to try to be creative and write up some sort of a condition that we could go for so that we can move on." Ms. Sibley agreed.

Ms. Ottens-Sargent expressed the opinion that Mr. Best's thoughts on the wildlife corridor were germane because the biologist's testimony had emphasized the corridor, something she said she would weigh when considering the benefits and the detriments of the project. "I think there's a great deal of merit to the plan that isn't before us," she remarked, "but again, I think that John [Best] is making a good point."

Addressing Mr. Best's point about the Selectmen's proposal switching the effects of nitrogen loading from the Lagoon watershed to the Sengekontacket Pond watershed, Mr. Zeltzer related that he too had thought about that. But having had a long discussion with Mr. Wilcox, he realized that one could not assume for a moment that moving the holes

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near the Lagoon over to the Town Parcel would shift the golf course's effects to a different watershed.

Mr. Zeltzer continued that he had been puzzled when looking at the layout, because the ribbon of natural wooded area referred to by the biologist, Ron Abrams, relied upon the 24-acre Town Parcel, the disposition of which was at this time unknown. Another factor to consider, he added, was the strong feeling of the Town fathers that the land swap would be of great benefit to Oak Bluffs.

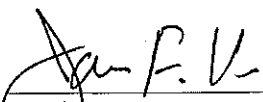
"Well, I think that the suggestion that has been made to the Town has some real merit," commented Ms. Sibley. "I respectfully disagree with Bob [Zeltzer] about the problem of the Applicant coming back to us." She pointed out that if the Applicant returned to the Commission with an approved golf course in hand and an agreement with the Town to switch the parcels, "that is not going to be a huge deal compared with the approval of the course to begin with."

Another issue, Ms. Sibley went on, was that Applicants had been coming before the Commission for 25 years and that when these Applicants changed their plans, they had to come back for a Modification. "That's the rules," she declared, "and those are important rules. So if we're going to try to find a way to encourage this to happen by conditioning an Approval to this golf course ... I don't think it should involve not looking at a change in the plan."

Governor's Appointee Richard L. Taylor suggested that the Staff work on language that could accomplish what Mr. Zeltzer was proposing and then have the Commissioners consider that. Ms. Greene agreed. Mr. Donaroma said that the Commission should encourage a better plan and accept it whenever they could.

Mr. Israel stressed the value of the process that all Applicants were obliged to go through. Mr. Woodruff remarked that if he were on the Resident Homesite Committee, he "would be more concerned about the value of owning the soil under your feet for future housing for our year-round residents than taking the cash."

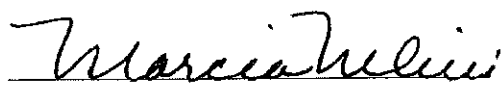
Mr. Israel made a Motion To Adjourn, duly seconded. The Regular Meeting adjourned at 10:41 p.m.



Chairman

April 24, 2002

Date



Clerk-Treasurer

May 23, 2002

Date

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PRESENT: J. Athearn; J. Best; C. Brown; M. Cini; M. Donaroma; J. Greene;
T. Israel; C.M. Oglesby; M. Ottens-Sargent; K. Rusczyk; L. Sibley;
R.L. Taylor; R. Toole; J. Vercruysse; K. Warner; R. Wey; A. Woodruff;
and R. Zeltzer.

ABSENT: A. Bilzerian; E. P. Horne; and J.P. Kelley.

[These Minutes were prepared by Staff Secretary Pia Webster using her shorthand notes as well as a tape recording of the Regular Meeting.]